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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,636	04/08/2004	Sridhar Ranganathan	17,872	8821

7590 06/04/2007

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EXAMINER	
HAND, MELANIE JO	
ART UNIT	PAPER NUMBER
3761	

MAIL DATE	DELIVERY MODE
06/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/820,636	RANGANATHAN ET AL.	
	Examiner	Art Unit	
	Melanie J. Hand	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 September 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Appeal Brief

In view of the Appeal Brief filed on September 18, 2006, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

Tatyana Zalukaeva.

Response to Arguments

Applicant's arguments, see Appeal Brief, pages 6-14, filed September 18, 2006, with respect to the rejection(s) of claim(s) 1, 3, 7, 8, 10-15, 21, 41 and 43 under 35 U.S.C. 102(b) or in the alternative, under 35 U.S.C. 103(a) and claims 9, 17-22, 24, 25-40 and 42 under 35

U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

Applicant's arguments, see Appeal Brief, filed September 18, 2006, with respect to the rejection of claims 1, 3, 7-15, 17-22 and 24-43 under 35 U.S.C. 112 have been fully considered and are persuasive. The rejection of claims 1, 3, 7-15, 17-22 and 24-43 under 35 U.S.C. 112 has been withdrawn.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 7-11, 13-15, 17-22, 24-26 and 28-43 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Carlucci et al (EP 804,915 A1).

With respect to **claim 1:** Carlucci teaches a single layer absorbent structure 46, comprising: a first surface opposite a second surface, wherein the single-layer absorbent structure 46 expands along the second surface in the presence of a liquid so that the first surface increases concavity in the presence of the liquid, the single-layer absorbent structure 46 expands to a

lesser extent along the first surface than the single-layer absorbent structure expands along the second surface in the presence of the liquid, and the single-layer absorbent structure has a thickness of about 2 mm, which falls within the claimed range of about 1 to about 10 millimeters in a dry state.

Carlucci teaches substantially identical materials for layer 46 to those that constitute the claimed absorbent structure. The property of fluid intake rate is considered herein to be an inherent property of the claimed structure that is anticipated by Carlucci. Alternatively, it would be obvious to one of ordinary skill in the art to modify the absorbent structure of Carlucci to obtain the claimed fluid intake rate with a reasonable expectation of success. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (a single layer absorbent structure having the claimed thickness) except for a property or function (in the present case, a fluid intake rate) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). The limitation "measured using the Fluid Intake Rate Test" is given little patentable weight herein, as the method by which the data is obtained does not differentiate over the prior art. (Col. 5, lines 44,45, Col. 14, lines 10-15)

With respect to **claim 3:** The single-layer absorbent structure 46 comprises cellulosic foam. (Col. 10, lines 36-38)

With respect to **claim 7:** The absorbent structure 46 has a subtended angle of about 30 degrees to about 180 degrees in the presence of a liquid, as such an agnle is the result of the manner of expansion of the sponge, which is dictated by the physical properties of the sponge, which are in turn dictated by the material of which the sponge is constructed. The basis for this inherency argument and the basis for shifting the burden of proof to applicant is stated *supra* with respect to claim 1.

With respect to **claim 8:** The absorbent structure 46 inherently has a radius of curvature of about 38 centimeters or less in the presence of a liquid. The basis for this inherency argument and the basis for shifting the burden of proof to applicant is stated *supra* with respect to claim 1.

With respect to **claim 9:** The absorbent structure 46 has a basis weight between about 50 and about 1000 grams per square meter. This argument is based upon Carlucci's teaching of a density of 0.5 g/cc and a thickness of 2 mm for said structure. (Col. 11, lines 29-31)

With respect to **claim 10:** The first surface is treated to expand less in the presence of a liquid relative to the extent to which the second surface expands in the presence of a liquid. (Col. 9, lines 13-15)

With respect to **claim 11:** The first surface is treated by aperturing. (Col. 9, lines 13-15)

With respect to **claim 13:** At least one of the first and second surfaces comprises at least one region of reduced expansion, inasmuch as Carlucci teaches that the cellulose sponge is a regenerated compressed sponge. (Col. 10, lines 36-38)

With respect to **claim 14:** At least one region of reduced expansion has been modified by densification. (Col. 10, lines 36-38)

With respect to **claim 15:** At least one of the first and second surfaces undergoes anisotropic expansion in the presence of a liquid inasmuch as the expansion occurs primarily in the Z-direction. (Col. 8, lines 29-38)

With respect to **claim 17:** Carlucci teaches an absorbent structure 28, comprising: a first layer 29 that inherently expands less than 10% in the presence of a liquid (Col. 14, lines 10-24); and an absorbent second layer 46 having a basis weight of 100 gsm, which falls within the claimed range of between about 100 and about 1000 grams per square meter bonded to the first layer (Col. 14, lines 21-24), wherein the absorbent second layer 46 inherently expands at least 20% in the presence of the liquid so that the second layer 46 increases concavity along an interface of the first and second layers in the presence of the liquid, and the absorbent structure 46 inherently has a fluid intake rate of about 0.5 cubic centimeters per second or greater measured using the Fluid Intake Rate Test.

Carlucci teaches substantially identical materials for layers 29 and 46 to those that constitute the claimed absorbent structure. The properties of expansion percentage and fluid intake rate are considered herein to be inherent properties of the claimed structure that are anticipated by Carlucci. Alternatively, it would be obvious to one of ordinary skill in the art to modify the absorbent structure of Carlucci to obtain the claimed expansion percentage and fluid intake rate with a reasonable expectation of success. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed

properties or functions are presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (a single layer absorbent structure having the claimed thickness) except for a property or function (in the present case, a fluid intake rate) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). The limitation "measured using the Fluid Intake Rate Test" is given little patentable weight herein, as the method by which the data is obtained does not differentiate over the prior art. (Col. 5, lines 44,45, Col. 14, lines 10-15)

With respect to **claim 18:** The absorbent structure 46 has a subtended angle of about 30 degrees to about 180 degrees in the presence of a liquid, as such an angle is the result of the manner of expansion of the sponge, which is dictated by the physical properties of the sponge, which are in turn dictated by the material of which the sponge is constructed. The basis for this inherency argument and the basis for shifting the burden of proof to applicant is stated *supra* with respect to claim 1.

With respect to **claim 19:** The absorbent structure 46 inherently has a radius of curvature of about 38 centimeters or less in the presence of a liquid. The basis for this inherency argument and the basis for shifting the burden of proof to applicant is stated *supra* with respect to claim 1.

With respect to **claim 20:** The absorbent structure has a thickness of about 2 mm for the second layer 46 and teaches by reference to U.S. Patent No. 4,950,264 to Osborn that the layer 29 has a thickness of 0.04 mm, thus yielding a thickness for the structure of Carlucci of 2.04

mm, which falls within the claimed range in a dry state. ('915, Col. 14, lines 15-20, '264, Col. 8, lines 16-30)

With respect to **claim 21:** The first layer 29 is comprised of polyethylene, which is elastomeric. (Col. 14, lines 10-15)

With respect to **claim 22:** Carlucci teaches by reference to U.S. Patent No. 4,950,264 to Osborn that the layer 29 has a basis weight of 0.005 grams per square centimeter, or 500 gsm, which falls within the claimed range of between about 10 and about 150 grams per square meter. ('264, Col. 8, lines 16-30)

With respect to **claim 24:** The first layer 29 comprises nonwoven material. (Col. 14, lines 10-15)

With respect to **claim 25:** The absorbent second layer 46 comprises cellulosic foam. (Col. 10, lines 36-38)

With respect to **claim 26:** Carlucci does not explicitly teach that the absorbent second layer comprises a superabsorbent material, however Carlucci does teach that layer 46 is comprised of any material that exhibits the desired swelling primarily in the Z-direction, which would include hydrogel superabsorbents, for example. Therefore it would be obvious to one of ordinary skill in the art to modify the absorbent layer 46 taught by Carlucci so as to comprise a superabsorbent material with a reasonable expectation of success. (Col. 8, lines 39-42)

With respect to **claim 28:** At least one of the first and second surfaces comprises at least one

region of reduced expansion, inasmuch as Carlucci teaches that the cellulose sponge is a regenerated compressed sponge. (Col. 10, lines 36-38)

With respect to **claim 29:** At least one region of reduced expansion has been modified by densification. (Col. 10, lines 36-38)

With respect to **claim 30:** Carlucci teaches an absorbent article 20, comprising: a body side liner 24; an outer cover 26; and an absorbent structure 46 having a basis weight of 100 gsm, which falls within the claimed range of between about 50 and about 1000 grams per square meter positioned between the body side liner 24 and the outer cover 26, wherein the absorbent structure includes a first surface opposite a second surface, the second surface of the absorbent structure is bonded to the outer cover, the absorbent structure expands along the second surface in the presence of a liquid so that the first surface increases concavity in the presence of the liquid, the absorbent structure expands to a lesser extent along the first surface than the absorbent structure expands along the second surface in the presence of the liquid.

Carlucci teaches substantially identical materials for the absorbent structure to those that constitute the claimed absorbent structure. The property of fluid intake rate is considered herein to be an inherent property of the claimed structure that is anticipated by Carlucci. Alternatively, it would be obvious to one of ordinary skill in the art to modify the absorbent structure of Carlucci to obtain the claimed fluid intake rate with a reasonable expectation of success. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (a single layer absorbent structure having

the claimed thickness) except for a property or function (in the present case, a fluid intake rate) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). The limitation "measured using the Fluid Intake Rate Test" is given little patentable weight herein, as the method by which the data is obtained does not differentiate over the prior art. (Col. 5, lines 44,45, Col. 14, lines 10-15)

With respect to **claim 31:** The absorbent structure comprises a single layer of absorbent material 46. (Col. 5, lines 44,45)

With respect to **claim 32:** The absorbent second layer 46 comprises cellulosic foam. (Col. 10, lines 36-38)

With respect to **claim 33:** The first surface is a surface of a first layer 29 and the second surface is a surface of an absorbent second layer 46 that is bonded to the first layer, the second layer expands in the presence of a liquid and increases concavity toward the first layer along an interface of the first and second layers in the presence of a liquid, and the first layer expands to a lesser extent than the second layer expands in the presence of a liquid. (Col. 14, lines 10-24)

With respect to **claim 34:** The first layer 29 comprises nonwoven materials. (Col. 14, lines 10-15)

With respect to **claim 35:** The absorbent second layer 46 comprises cellulosic foam. (Col. 10, lines 36-38)

With respect to **claim 36:** The first surface 29 is treated to expand less in the presence of a liquid relative to the extent to which the second surface expands in the presence of a liquid. ('264, Col. 8, lines 16-30)

With respect to **claim 37:** Carlucci teaches by reference to Osborn that the first surface 29 is treated by aperturing. ('264, Col. 8, lines 16-30)

With respect to **claim 38:** The second surface inherently expands at least 20% in the presence of a liquid. The basis for this argument of inherency and the basis for shifting the burden of proof to the applicant are stated *supra* with respect to claim 30.

With respect to **claim 39:** The absorbent article 20 comprises a personal care absorbent article. (Abstract)

With respect to **claim 40:** The absorbent article 20 comprises a sanitary napkin.

With respect to **claim 41:** Carlucci teaches a single layer absorbent structure 46, comprising: a first surface opposite a second surface, wherein the single-layer absorbent structure 46 expands along the second surface in the presence of a liquid so that the first surface increases

concavity in the presence of the liquid, the single-layer absorbent structure 46 expands to a lesser extent along the first surface than the single-layer absorbent structure expands along the second surface in the presence of the liquid, and the single-layer absorbent structure has a thickness of about 2 mm, which falls within the claimed range of about 1 to about 10 millimeters in a dry state. At least one of the first and second surfaces undergoes anisotropic expansion in the presence of a liquid inasmuch as the expansion occurs primarily in the Z-direction. (Col. 8, lines 29-38)

Carlucci teaches substantially identical materials for layer 46 to those that constitute the claimed absorbent structure. The property of fluid intake rate is considered herein to be an inherent property of the claimed structure that is anticipated by Carlucci. Alternatively, it would be obvious to one of ordinary skill in the art to modify the absorbent structure of Carlucci to obtain the claimed fluid intake rate with a reasonable expectation of success. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (a single layer absorbent structure having the claimed thickness) except for a property or function (in the present case, a fluid intake rate) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). The limitation "measured using the Fluid Intake Rate Test" is given little patentable weight herein, as the method by which the data is obtained does not differentiate over the prior art. (Col. 5, lines 44,45, Col. 14, lines 10-15)

With respect to **claim 42**: Carlucci teaches by reference to U.S. Patent No. 4,950,264 to Osborn that the layer 29 has a basis weight of 0.005 grams per square centimeter, or 500 gsm, which falls within the claimed range of between about 10 and about 150 grams per square meter. ('264, Col. 8, lines 16-30); and an absorbent second layer 46 having a basis weight of 100 gsm, which falls within the claimed range of between about 100 and about 1000 grams per square meter bonded to the first layer (Col. 14, lines 21-24), wherein the absorbent second layer 46 inherently expands at least 20% in the presence of the liquid so that the second layer 46 increases concavity along an interface of the first and second layers in the presence of the liquid, and the absorbent structure 46 inherently has a fluid intake rate of about 0.5 cubic centimeters per second or greater measured using the Fluid Intake Rate Test.

Carlucci teaches substantially identical materials for layers 29 and 46 to those that constitute the claimed absorbent structure. The properties of expansion percentage and fluid intake rate are considered herein to be inherent properties of the claimed structure that are anticipated by Carlucci. Alternatively, it would be obvious to one of ordinary skill in the art to modify the absorbent structure of Carlucci to obtain the claimed expansion percentage and fluid intake rate with a reasonable expectation of success. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (a single layer absorbent structure having the claimed thickness) except for a property or function (in the present case, a fluid intake rate) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per

In re Fitzgerald, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). The limitation "measured using the Fluid Intake Rate Test" is given little patentable weight herein, as the method by which the data is obtained does not differentiate over the prior art. (Col. 5, lines 44,45, Col. 14, lines 10-15)

With respect to **claim 43:** Carlucci teaches an absorbent structure 28, comprising: a first layer 29 that inherently expands less than 10% in the presence of a liquid (Col. 14, lines 10-24); and an absorbent second layer 46 having a basis weight of 100 gsm, which falls within the claimed range of between about 100 and about 1000 grams per square meter bonded to the first layer (Col. 14, lines 21-24), wherein the absorbent second layer 46 inherently expands at least 20% in the presence of the liquid so that the second layer 46 increases concavity along an interface of the first and second layers in the presence of the liquid. The first layer 29 is comprised of polyethylene, which is elastomeric. (Col. 14, lines 10-15)

Carlucci teaches substantially identical materials for layers 29 and 46 to those that constitute the claimed absorbent structure. The properties of expansion percentage and fluid intake rate are considered herein to be inherent properties of the claimed structure that are anticipated by Carlucci. Alternatively, it would be obvious to one of ordinary skill in the art to modify the absorbent structure of Carlucci to obtain the claimed expansion percentage and fluid intake rate with a reasonable expectation of success. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (a single layer absorbent structure having the claimed thickness) except for a property or function (in the present case, a fluid intake rate) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render

obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). The limitation "measured using the Fluid Intake Rate Test" is given little patentable weight herein, as the method by which the data is obtained does not differentiate over the prior art. (Col. 5, lines 44,45, Col. 14, lines 10-15)

Claims 12, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlucci et al ('915).

With respect to **claims 12,27:** Carlucci does not explicitly teach that at least one of the first and second surfaces comprises at least one slit. However, since Carlucci teaches that the apertures may have non-circular shapes and have various dimensions, it would be obvious to one of ordinary skill in the art to modify the structure of Carlucci so as to have apertures in the form of at least one slit with a reasonable expectation of success. The recitation "to control shaping" constitutes functional language that is given little patentable weight herein. (Figs. 4b,c, Col. 9, lines 46-55)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

May 29, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER